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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/245,596	02/05/1999	DARRELL J. KUTCHMAREK	SPRINGS3.0-0	5065

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EXAMINER

CHOI, STEPHEN

ART UNIT PAPER NUMBER

3724

DATE MAILED: 09/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary

Application No.

09/245,596

Applicant(s)

KUTCHMAREK ET AL.

Examiner

Stephen Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-42, 44-52 and 55-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-42, 44-52 and 55-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 40-42, 44-48, 52, and 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer (US 276,265) in view of Sands et al. (US 5,339,716).

Meyer discloses the invention substantially as claimed except for a clamping assembly including a clamping block, and a guide mandrel. Sands discloses a guide mandrel (e.g., 44) disposed in head receiving area (e.g., 26) and a clamp assembly (e.g., 52) including a clamp block (e.g., 66). Given the teachings of Sands, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a clamping assembly including a clamping block and a guide mandrel on Meyer's device in order to secure the workpiece in place to prevent twisting during a cutting process. With respect to claim 45, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a backup made of nylon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

3. Claims 49-50 and 58-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer (US 276,265) in view of Sands et al. (US 5,339,716) as applied to claims 40 and 52, and further in view of Walker (US 245,330).

Meyer and Sands disclose the invention substantially as claimed except for the cutting blade including a pocketed portion and a massive portion. Walker discloses a cutting blade (e.g., C) having a pocketed portion and a massive portion wherein the cutting edge is confined entirely with the pocketed portion (e.g., see Figure 1). Given the teachings of Walker, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cutting blade with a massive portion surrounding a pocketed portion having a cutting edge on the modified device of Meyer in order to provide the strength and durability of the cutting blade.

4. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer (US 276,265) in view of Sands et al. (US 5,339,716) as applied to claim 40 above, and further in view of Marocco (US 5,806,394).

Meyer and Sands disclose the invention substantially as claimed except for a measuring assembly and a stop block. Marocco teaches a measuring assembly (e.g., 94) and a stop block (e.g., 92) wherein the stop block is linked to a driver (e.g., 54, via 100, 94) such that the stop block moves away during a cutting operation. Given the teachings of Marocco, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a measuring assembly and a stop block on the modified device of Meyer in order to facilitate measuring and positioning of a portion of the workpiece to be cut. Furthermore, it would have been obvious to one

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having ordinary skill in the art at the time the invention was made to provide the stop block being moved away during the cutting operation on the modified device of Meyer in order to allow the free ends of the workpiece to fall away freely to reduce the force exerted by the cutting blade and to prevent the likelihood of cracking the workpiece while being cut.

Response to Arguments

5. Applicant's arguments filed 07 June 2002 have been fully considered but they are not persuasive.

In response to Applicants' contention that Sands teaches away from the claimed invention since the device of Sands is not designed to simultaneously cut through a bottom rail, slats and a top rail and the examiner has failed to consider the claimed invention as a whole since neither the Sands nor Meyer references discuss the "cracking" problem noted in Applicant's disclosure, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. In addition, it is noted that the modified device of Meyer as proposed is also capable of simultaneously cutting through the bottom rail, slats and the top rail. Furthermore, it has been held that the mere fact that the references relied on by the Patent and Trademark Office fail to evince an appreciation of the problem identified and solved by applicant is not, standing alone, conclusive evidence of the nonobviousness of the claimed subject matter.

Applicants further contend that Meyer and Sands provide no suggestion that the references be combined to meet the limitations set forth in claim 40 and the proposed modification would change the principal of operation of Meyer since Sands moves horizontally in only one axial direction while Meyer teaches moving the blade along multiple axes at the same time. The examiner respectfully disagrees. Sands clearly suggests the desirability to provide a clamping assembly on a cutting device in order to secure the workpiece for a cutting operation and such teachings would have suggested to one of ordinary skill in the art to modify Meyer's device to provide a clamping assembly. Furthermore, the examiner's rejection did not rely on how the cutting blade is used with such a clamping assembly. It is rather relied on the teachings of Sands on the use of clamping assembly on a cutting device such that the principle of operation of neither Meyer nor Sands would be changed by the proposed modification.

In addition, Applicants also contend that Walker does not teach a cutting blade set forth in claims 49 and 58 since Walker makes absolutely no mention of the shape or dimensions of the blade. It is noted that the solid line defining a portion of the blade including the cutting edge in the Walker reference clearly suggests that the portion is recessed such that the blade has a pocketed portion that is thinner than a massive portion that surrounds the pocketed portion. In addition, whether the drawings are provided correctly or not is not the issue. It is whether the drawings suggest a specific structure to one of ordinary skill in the art, even if accidental. Furthermore, it has been held that an accidental disclosure, if clearly made in a drawing, is available as a

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reference. In re William M. Bager et al., 18 C. C. P. A. (Patents) 1094, 47 F.2d 951, 8 USPQ 484; In re Wagner, 20 C. C. P. A. (Patents) 985, 63 F.2d 987, 17 USPQ 243.

6. Applicant's arguments with respect to claim 51 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

7. **THIS ACTION IS MADE NON-FINAL.**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Choi whose telephone number is 703-306-4523. The examiner can normally be reached on Monday thru Friday between 9am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

SC
September 3, 2002


Stephen Choi
Patent Examiner
A.U. 3724